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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 RICHARD J. GLAIR,
12 Plaintiff,

13 v.

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15 A. GUTIERREZ,
16 Defendant.
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) Case No. LA CV 17-2886 DDP (JCG)

) **ORDER ACCEPTING REPORT AND**
) **RECOMMENDATION OF UNITED**
) **STATES MAGISTRATE JUDGE**

18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended
19 Complaint (“FAC”), Defendant’s Motion to Dismiss (“Motion”), the Magistrate
20 Judge’s Report and Recommendation (“R&R”), Plaintiff’s Objections to the R&R
21 (“Objections”), and the remaining record, and has made a *de novo* determination.

22 Nothing in the Objections refutes the Magistrate Judge’s finding that Plaintiff
23 failed to plausibly allege that he is entitled to relief under 42 U.S.C. § 1983. (*See* R&R
24 at 3-4.) As the R&R explained, Defendant did not prevent Plaintiff from speaking or
25 protesting, but rather, told Plaintiff that he could not lean his signs against state
26 property. (*See id.*; FAC at 3-4); *see also Clark v. Cmty. for Creative Non-Violence*,
27 468 U.S. 288, 293 (1984) (“Expression, whether oral or written or symbolized by
28 conduct, is subject to reasonable time, place, or manner restrictions. . . . provided that

1 they are justified without reference to the content of the regulated speech, that they are
2 narrowly tailored to serve a significant governmental interest, and that they leave open
3 ample alternative channels for communication of the information.”).

4 Moreover, Plaintiff relies on the same underlying facts and argument that he
5 made for his section 1983 causes of action to support his Bane Act claim. (*See*
6 *Objections* at 6-10, 11-12.) However, to succeed on a Bane Act claim, Plaintiff would
7 need to present a theory of a Bane Act violation that went beyond the allegations of his
8 section 1983 violations because the Bane Act requires additional coercion. *See*
9 *Shoyoye v. Cty. of L.A.*, 203 Cal. App. 4th 947, 959 (2012) (“The [Bane Act] requires a
10 showing of coercion independent from the coercion inherent in the wrongful detention
11 [or other tort] itself.”); *see also Barsamian v. City of Kingsburg*, 597 F. Supp. 2d 1054,
12 1064 (E.D. Cal. 2009) (explaining that to sustain a claim under the Bane Act, “it must
13 be demonstrated that the [constitutional] violation occurred *and* that the violation was
14 accompanied by threats, intimidation or coercion within the meaning of the statute”).
15 As the R&R concluded, “there was no intentional or attempted interference with
16 Plaintiff’s constitutional or other rights,” given that Defendant did not keep Plaintiff
17 from speaking or holding his signs. (*See R&R* at 5.) Thus, Plaintiff’s Bane Act claim
18 must also fail.

19 Finally, Defendant did not violate Plaintiff’s Fourth Amendment rights through
20 an “unreasonable seizure[],” (*Objections* at 10), because nowhere in the FAC does
21 Plaintiff allege that Defendant seized Plaintiff’s property. (*See generally* FAC.)
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1 Accordingly, IT IS ORDERED THAT:

- 2 1. The Report and Recommendation is approved and accepted in substantial
3 part;
4 2. Defendant's Motion is granted;
5 3. Judgment be entered dismissing this action without prejudice; and
6 4. The Clerk serve copies of this Order and the Judgment on the parties.
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9 DATED: 11-20-18



10 HON. DEAN D. PREGERSON
11 UNITED STATES DISTRICT JUDGE
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